

ROYAL COMMISSION

REPORT OF THE COMMISSIONER RESPECTING THE
FINANCIAL AFFAIRS OF THE CORPORATION OF
THE CITY OF BELLEVILLE

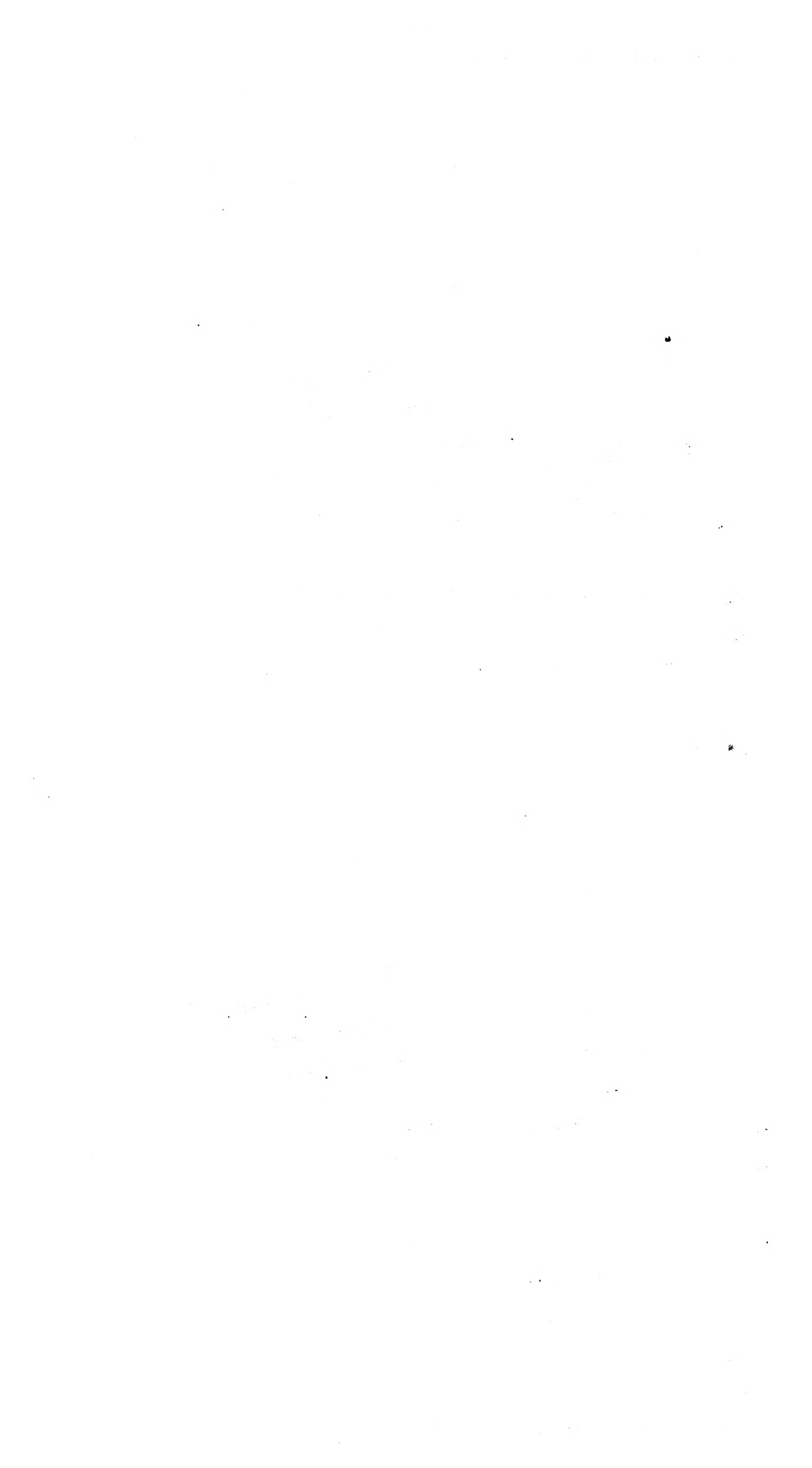
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Report of the Commissioner appointed to inquire into the financial affairs of the Corporation of the City of Belleville and the local Boards and Commissions thereof.

I was directed by an Order of the Lieutenant-Governor in Council upon the recommendation of the Minister of Municipal Affairs to inquire into the financial affairs of the Corporation of the City of Belleville and the local Boards and Commissions thereof. Without limiting the foregoing the Inquiry was to consider any matter connected with the good government of the Corporation of the City of Belleville or the conduct of any part of its business which might be relevant, including the actions of members of Council, members of the Board of Parks Management, the Recreation Committee, the Parking Commission and the officers and servants of the Municipality; and local Boards thereof as defined in The Department of Municipal Affairs Act. This Inquiry was directed pursuant to the provisions of Section 332 of The Municipal Act. The Commission of Inquiry was granted at the request of the Council of the Corporation of the City of Belleville. In order to deal with these matters systematically I propose to review the evidence given before me under the following heads:

1. Respecting the finances of the local Boards, Commissions and Committees.
2. The conduct of the City auditor, John D. Lewars.
3. The conduct of the City Manager and City Treasurer, Drury S. Denyes.
4. The City's banking procedure.
5. The action of members of the Council and members of the Memorial Arena Commission.
6. The present financial position with certain recommendations.

With respect to the Boards and Commissions of the City, this Commission heard the evidence of the Chairman and Secretary of the Bay of Quinte District High School Board, the Separate School Board, the Public School Board, the



Public Utilities Commission, the Board of Parks Management, the Recreation Committee, the Public Library Board, the Belleville District Memorial Hospital Board. In the latter case the Chairman of the Board and the former Administrator gave evidence. It would appear from the evidence given before me by these public spirited citizens that the citizens of Belleville are being well served by the members of the various Boards and Commissions under their governing statutes. These Boards, not the Council, represent the people with respect to their field of jurisdiction, although they are for the most part dependent upon the Municipality for their finances. Certain of them, such as the Board of Parks Management, are given the right by statute to require the Council to provide funds within certain limits to meet their requirements. It should be noted that in the case of the Parks Board and the Recreation Committee that when the auditors noted an overdraft at the end of 1958 their members took immediate steps to correct this situation.

The City auditor has also drawn attention in the several pages headed, "Comments" with which he prefaces each Auditor's Report in both the 1957 and 1958 Annual Reports for the City of Belleville and in the Reports for the same years for the Bay of Quinte District High School Board that the monies allocable to the Public School Board, the Separate School Board and the District High School Board under the provisions of Section 54 (4) of The Assessment Act as amended in 1955 have not been carried out. Section 51 (4) and (5) of The Assessment Act requires that monies levied under this Section (taxes from newly constructed properties not on the original Roll) be turned over to the School Boards by December 31st of the year in which it is levied and that an accounting therefor be furnished to the Board. The auditor states this has not been done by the Corporation and he recommends that a reminder of the requirements under these Sections be sent to the Corporation each year shortly before December 15th. Mr. Denyes in answer to a question as to why these requirements had not

been carried out, stated that since the Townships comprising the High School District had not made such payments he did not feel the City should do so. The auditor has done his duty in pointing out these matters and it should be possible in the future to carry out the provisions of The Assessment Act in this regard.

In connection with the evidence of Mr. O.H. Scott, the Secretary-Manager of the Belleville Public Utilities Commission, it would appear that only one signature was required on the payroll cheques themselves but the monies required for these payrolls were transferred only on the signature of the Chairman and the Manager after the exact amount required for transfer by cheque with the two signatures had been carefully checked with the actual payroll accounts. There can be no doubt in the minds of all who heard Mr. Scott that no unauthorized payment would ever get on the Public Utilities Commission payroll accounts. The facts are that the one signature for payroll cheques will come up in the matter of the City Treasurer's own practice where such safeguards were singularly lacking.

I report accordingly that in so far as the financial affairs of the various Boards and Commissions of the City of Belleville are concerned (with the sole exception of the Arena Commission) the citizens of Belleville have been well and faithfully served. What is more, it would appear that these Board Chairmen and Treasurers have brought to the attention of their Boards the comments of the City auditor with respect of certain matters that arose from time to time in the conduct of their business and to which auditor's comments in his reports these Boards have paid attention.

2. A Municipal auditor has a vital duty to perform and on the care, accuracy and alertness with which he completes his audit largely depends the financial health of the Municipality. Mr. J.D. Lewars has carried on the duties of auditor for the City of Belleville since the year 1953 although never appointed by By-law after the death of the

late F. A. R. MacFadden, in whose name he carries on this practice as a chartered accountant.

In 1958 Mr. Lewars discovered that certain hockey players were on the Public Works payroll of the City of Belleville but made no report. ✓ Instead, he went to Mr. Denyes and asked him why this money was being paid out for hockey salaries from the General funds. Mr. Lewars stated that Mr. Denyes told him and his employee, Mr. Adams, that this was merely a temporary arrangement to finance hockey and that when the season was over and the Hockey Club accounts were settled it would all be repaid.

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As a result of the carelessness and negligence of the City auditor the disclosure of the fact that these hockey players were being paid out of the General funds of the City of Belleville on cheques issued by the Treasurer on his signature was postponed for a year and the total sum of monies illegally paid out was substantially increased before the City auditor reported the matter as the result of the 1958 audit.

Mr. Lewars, in his 1957 Report, specifically reported to Council that Section 341 (10) and (11) of The Municipal Act provided a penalty for misapplication of revenues by council. It will be convenient to quote Subsection (9) as well as (10) and (11) at this point:

"(9) If the council authorizes the borrowing of or borrows any larger amount than is permitted under this section, every member who knowingly votes therefor shall be disqualified from holding any municipal office for two years.

(10) If the council authorizes the application of any revenues of the corporation charged under the authority of this section otherwise than in repayment of the loan secured by such charge, the members who vote for such application shall be personally liable for the amount so applied, which may be recovered in any court of competent jurisdiction.

(11) If any member of the council or officer of

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than in repayment of the loan secured by such charge, he shall be personally liable for the amount so applied, which may be recovered in any court of competent jurisdiction."

Mr. Lewars then stated that in his opinion revenues applied by the Corporation for the following purposes were contrary to the provisions of Section 341 of The Municipal Act and the members of Council and officials as indicated above may be held personally liable.

Purchase of own debentures	\$ 56,785.63
Financing of Capital Fund Expenditures	9,688.81
Deferred Charges - Purchase and Improvement	65,213.08
of Off-Street Parking Lot	<u>\$131,687.52</u>

It is hard to see how much plainer Mr. Lewars could ✓
have made his warnings with respect to these particular matters.

They were placed in the preface to the 1957 Auditor's Report under the heading of "Comments" and with respect, it would seem to me that the City Treasurer, the Mayor and the members of Council, in their own interest, if not in the City's interest would have paid attention to the Auditor's warnings. *D.M.V.*

Similarly in the 1958 report prepared by Mr. Lewars there are thirteen pages of "Comments" on the City's affairs and certain of its Boards and Commissions. Mr. Lewars on Page 3 of the 1958 report repeats his warning as set out in the 1957 Report and again quotes Section 341 (10) and (11) of The Municipal Act. Mr. Lewars repeats his opinion that revenues applied by the Corporation for the following purposes are contrary to the provisions of Section 341 of The Municipal Act and the members of Council and officials as indicated above may be held personally liable.

The amount of expenditures called in question in this Report has gone up from the 1957 audit of \$131,687.52 by more than \$100,000.00 because for the first time advances to the Memorial Arena are included in an item of slightly in excess of \$95,000.00. The auditor has summarized these figures as follows :

Purchase of own debentures	\$ 51,158.43
Advances to Recreation Committee	3,302.74
Advances to Memorial Arena	95,006.92
Advances to Parking Commission	82,631.09
	<u>\$232,099.18</u>

Mr. Lewars also pointed out on page 4 of his "Comments" that the year's operations resulted in a net deficit of \$86,147.80, which was charged to the Deficit Account in Statement "C", resulting in an accumulated deficit as at December 31st, 1958, of \$106,219.80. Under the provisions of Section 311 of The Municipal Act this deficit had to be levied for in 1959.

It would appear from the evidence given in this Inquiry that the Auditor's Report was not available before the City's tax rate was struck in the years 1957, 1958 and 1959, and that one of the causes of the present plight of the City's financial position in revenue account is the fact that Council has not made sufficient levies in these years to pay their way.

For the first time, in the 1958 Report, Mr. Lewars understood that the Hockey Club was the sole responsibility of the Arena Commission and he set up the overdrafts in the Hockey accounts in Statement 15 in the 1958 Report. Mr. Lewars has set forth on page 8 of the "Comments" in the 1958 Report for the first time the Hockey salaries paid out of the General Fund of the City and this is summarized as the amount due by the Arena to the General Fund of the Corporation as follows:

Paid from General Fund during 1958 re Arena costs	\$29,377.03
<u>HOCKEY SALARIES PAID BY GENERAL FUND -</u>	
1956-1957 Hockey Season -	16,735.83
1957-1958 Hockey Season -	39,256.06
1958-1959 Hockey Season -	1,265.00
Direct transfers from General Fund to Hockey Club	8,373.00
	<u>\$95,006.92</u>

Mr. Lewars did not examine the Minute Book of the Arena Commission although it was available in the Clerk's office. He was under the impression that there was no such Minute Book and stated he was unable to ascertain what authorizations had been made relevant to the Hockey Club.



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Mr. Lewars also stated that so far as he was able to ascertain there is no existing legislation which will permit an Arena Commission to borrow money from a Bank or to incur an overdraft. The Auditor also pointed out that the deficit of the Arena and Hockey Club is being financed by Bank overdraft and advances from the General Fund, both of which would appear to be illegal. The Auditor's conclusion is that Council must levy on the general ratepayers of the Corporation in order to raise sufficient funds to cover this deficit. Mr. Lewars and his staff, with respect to certain actions of Council, were warning the members that such actions were illegal, yet in other respects due to the carelessness of the Auditor and members of his staff for which he is responsible, the ratepayers of the City of Belleville will have to make up a much larger deficit than would have been the case had the auditor caught the illegal expenditures on the City payroll account when the matter first came to his attention. The specific acts of negligence arising out of lack of due care included the following:

1. With respect to the 1956 Audit - Mr. Lewars knew there was an overdraft in the Arena Commission account and no comment is made by the auditor. In all these references the first number given is the day of the daily transcript of evidence and the second is the page. This reference is Sept. 29, page 240.
2. The auditor did not read the Minutes of Council with any degree of care or he would have noted that it owned and operated a Hockey Club. Sept. 29, page 254. Mr. Lewars took Mr. Denyes' word that he should not audit the Hockey Club accounts, that they were not any part of the City audit, and he never audited these accounts prior to May 9th, 1959.
3. The auditor made no comment on the cheques bearing one signature. Mr. Lewars is quite frank that he did not personally examine the payroll cheques, that portion of the audit had always been delegated to a Junior employee who had

not distinguished between one signature and another. Mr. Lewars stated he was personally responsible for all the Boards and Commissions, with the exception of the Memorial Arena, and that Mr. Adams was the employee who usually checked the Arena accounts. On June 18th, 1956, as shown by Exhibit 24, there was a resolution of Council that the City Treasurer be authorized to sign all payroll cheques and in his absence, the Deputy City Treasurer. Mr. Lewars states, "I must have missed the significance of it because I have no recollection of any warning signal arising when I read it." Sept. 29, page 304.

4. Mr. Lewars certified that he had read the Minutes of Council and Commissions but he did not know the Arena had any Minutes. Sept. 29, pages 315 and 316.

5. The auditor have an answer in his reports that he had inquired into the sufficiency of the bonding of employees but the extent of the Bond on the City Treasurer is an amount of \$22,500.00. Mr. Lewars was asked this question by Commission counsel and gave this answer:

Question - "Yes, now on the questionnaire at the back of your Report for 1958 there is this question, 'Is in your opinion the amount of the Surety Bond coverage on the officers reasonable?'"

Answer - "Yes."

Question - "Now having in mind that the budget for 1958 is two million, three hundred thousand plus and the revenue from taxation was one million, seven hundred thousand, do you consider a bond in those amounts reasonable?"

Answer - "I'm afraid that on recollection I do not."

The Commissioner:

Question - "Mr. Lewars, should not it have been at least \$100,000.00 for the magnitude of these operations?"

Answer - "Well it would appear so. Yes."

Mr. Fennell: "I am afraid I would go a lot higher than that Mr. Commissioner." Sept. 30, page 409 and top of page 410.

6. The Minutes of the Arena Commission were available in the Clerk's Office and hence there was a whole volume of these Minutes. Sept. 30, page 512. Exhibit 36. These Minutes commence on January 10th, 1950, and end with the Minutes of the Commission Meeting held on August 12th, 1959, in which it is noted that a letter from the Province of Ontario re hospital tax was received and read and that the financial report of the Belleville Senior A Hockey Club for the period October 1st, 1958, to January 30th, 1959, was presented and examined. There were present at this Meeting Alderman Tice, Chairman, His Worship Mayor Hyde and Aldermen Grahame and Grandame.

7. In the 1956 Audit Report no comment was made on the fact that payments to hockey players were being made from the City payroll account. In the examination of Mr. J. Adams, an employee of the City Auditor, whether the amount shown for hockey players' salaries at the end of 1956 is \$555.00 as stated by Mr. Adams or \$2505.00 as stated by Mr. Lewars, there is no question that as early as the end of the year 1956 the auditor should have had information through his employee Mr. J. Adams, dealing with the payments to hockey players. The latter, unfortunately for all concerned, did not appreciate the significance of these payments and did not report anything amiss to Mr. Lewars at the time of the 1956 audit. Sept. 29, page 227.

8. The auditor, on Mr. Denyes' word, without any vouchers, approved of an expenditure from the Arena to the Hockey Club of \$26,796.00. Mr. Lewars' employee, Mr. J. Adams, was asked by Commission Counsel if it did not seem rather strange to him for Mr. Adams to ask for an explanation of a man who was managing the Hockey Club about an expenditure made to the Club he was managing. Mr. Adams was further asked, "Wouldn't that make the whole transaction very suspicious to you as an auditor?"

Answer - "It didn't to me, no, sir." Oct. 6, Page 1178.

9. As a result of a meeting of the Arena Commission

in April, 1957, there was a transfer of over \$8,000.00 to pay the overdraft in the Hockey Club account. The auditor certified this expenditure. There was no voucher for it and no comment by the auditor respecting what was an illegal transfer of public funds.

10. The evidence of the auditor shows that in many cases all he saw was cancelled cheques. Sept. 30, page 449. The duties and instructions for Municipal auditors as prescribed by the Department of Municipal Affairs include the examination of all vouchers, invoices, etc., for payments as to their actuality, as to their approval by Council and for the distribution thereof. Production of receipts and cancelled cheques is not sufficient as they are only evidence of payment; vouchers, invoices, etc., are essential to establish the validity of payment. The auditor should ascertain whether there are any payments made otherwise than by cheques of the Corporation and signed by the Treasurer, or by the Treasurer and countersigned by the mayor, reeve or other authorized official.

11. Mr. Lewars stated that he personally learned for the first time in the Spring of 1956 that hockey players were being paid from the City's payroll account. Mr. Lewars spoke to Mr. Denyes and then the auditor certified his 1957 Report without comment. Understandably, the members of the Belleville City Council might not be expected to find that over \$50,000.00 of expenditures were hidden as an account receivable from the Arena to the City.

On Sept. 29, page 191, lines 14 to 28 appear these questions and answers:

Question - "Alright, what did you do?"

Answer - "We went to Mr. Denyes and asked him what this meant,
= why was this money being paid out for hockey salaries
from the General funds."

The Commissioner:

Question - "Who went?"

Answer - "I did."

Question - "Yourself?"

Answer - "Yes."

Question - "Was anyone else with you?"

Answer - "Yes, Mr. Adams. At that time we were told that this was merely a temporary arrangement to finance hockey and that when the season was over and the Hockey Club accounts were settled it would all be repaid."

Mr. Fennell:

Question - "Yes?"

Answer - "Now we have no reason to doubt Mr. Denyes' word.

He was the Hockey Manager, the City Manager and the City Treasurer and he had been here for ten years and nothing had occurred to make us suspicious of anything he might tell us, so primarily we accepted his word."

Mr. Lewars went on to explain that the accounts receivable and sundry accounts totalled \$51,633.83 and that the amount for hockey salaries charged into that is \$29,810.19. In answer to Commission Counsel's questions Mr. Lewars stated that he or his staff checked every payroll cheque and that this amount of \$29,810.19 (later shown in Mr. Lewars' summary as \$30,164.73) is the amount that was charged up in the General Ledger as being due from hockey and on the payroll voucher it was set out as hockey. Exhibit 49 is an analysis of payments made from City funds for Hockey Club salaries for the years 1956, 1957, 1958 and 1959. The statement lists twenty-one Senior A Hockey players and details the salaries paid to each of them and this statement can be summarized here as follows:

1956 hockey salaries -	\$2,505.00
1957 hockey salaries -	30,164.73
1958 hockey salaries -	27,445.00
1959 hockey salaries -	9,800.00
Total hockey players' salaries paid from City of Belleville funds -	<u>\$69,914.73</u>

In addition, there is listed on this Exhibit the direct transfer to the Hockey Club account in 1958 of \$8,373.00. This makes a total as shown on this Exhibit prepared by Mr. J.D. Lewars, the City Auditor, of \$78,287.73.

12. The City auditor was assuredly under a duty to inquire into the matters respecting the above illegal payments since Mr. Lewars' staff had audited the 1956 and 1957 statements. I trust it is not being naive in stating that Council would have acted immediately had the auditor, as the City's watchdog, reported these illegal payments and the auditor's negligence in this regard has been most costly to the ratepayers of the City of Belleville. As Juvenal said in another context, "Quis custodiet ipsos custodes?"

I should make it clear, after listening to the evidence of Mr. Lewars, that there is no question of any collusion between Mr. Lewars and Mr. Denyes in not reporting the illegal actions of the Treasurer which a member of the auditor's staff first noted in the comparatively few payroll entries for hockey players at the end of the year 1956. However, the auditor is responsible for the work of his employees. Commission Counsel has directed my attention to the duties of an auditor as set out re London and General Bank (1895), 2 Ch 673. This case dealt at great length with the duty of an auditor in auditing the books of a company. Mr. Fennell read the following extract from that case:

"How then is the duty of an auditor to be
"defined. It is first to ascertain and
"then to state the true financial position
"of the company at the time of the audit
"with regard to ascertaining the position
"he must do his work by taking an examination
"of the books, but since the books may them-
"selves not show the true position of the
"company, he must make such inquiry as may be
"called for in the particular circumstances
"in order to satisfy himself, in short, he
"must be reasonably careful in the conduct of
"his examination of the books, he must not be
"negligent. Having properly discharged his
"duty as to ascertaining, he must next apply
"himself to his duty as to statement, in other

"words he must draw such a balance sheet as
 "will genuinely mirror the books which he has
 "examined. An auditor may discharge his duty
 "of ascertaining with the exercise of reason-
 "able care and professional skill and still
 "fail to ascertain the truth, but he will not
 "necessarily by reason thereof become liable
 "in negligence; for he is not an insurer. He
 "might well be deceived into forming erroneous
 "conclusions without being culpable, since the
 "books may have been fraudulently prepared;
 "whether he ought to have discovered the mode
 "and the means whereby the fraud was effected,
 "is one of the issues which the Court has to
 "decide upon the particular facts of each parti-
 "cular case. The auditor must accordingly be
 "circumspect, he is not required to be sus-
 "picious of everybody and of every document,
 "but once suspicious circumstances are revealed,
 "he must go on to make a more careful examina-
 "tion than would otherwise be adequate. The
 "obligation to be circumspect does not involve
 "proposition that he must do for himself the
 "work which properly belongs to other experts;
 "he is entitled to rely upon the views of
 "specialized experts - in the absence of special
 "reasons, which would first direct the mind of
 "a reasonably careful auditor to the existence
 "of circumstances warranting a suspicious atti-
 "tude towards such experts' opinion."

In this statement of principles the words, "but
 once suspicious circumstances are revealed, he must go on to
 make a more careful examination than would otherwise be
 adequate" sums up the issue here.

"It is not within the scope of my duties as
 Commissioner to do more than report the facts as appear from
 the evidence. The Belleville City Council have the

responsibility and it is their duty under the provisions of Section 245 (1) of The Municipal Act to deal with the appointment of an auditor.

This Section reads as follows:

"The council of every municipality shall by by-law appoint one or more auditors who shall be persons licensed by the Department as municipal auditors and who shall hold office during good behaviour and be removable for cause upon the vote of two-thirds of the members of the council and every person so appointed shall in addition to his duties in respect of the corporation audit the accounts and transactions of every local board as defined in The Department of Municipal Affairs Act."

It should be noted that there was no by-law produced in evidence before me to show that Mr. Lewars had ever been appointed as an auditor of the City of Belleville. He apparently continued on from year to year in his capacity as successor to the late F. A. R. MacFadden.

3. Mr. Drury Sills Denyes has been Treasurer of the City of Belleville since the year 1948. By By-Law No. 5575, (Exhibit 9), passed on the 14th day of June, 1948, Drury Denyes was engaged as Treasurer for the City of Belleville as from the 1st day of June, 1948, at an annual salary of \$3,000.00. This was to be increased annually by \$120.00 until the maximum salary of \$3,600.00 was reached. The duties of the Treasurer were stated to be as set out in By-Law No. 509 of the Consolidated By-Laws 1940 Edition of the Corporation of the City of Belleville. Mr. Denyes carried on his duties as City Treasurer for some eight years and in the exercise of those responsibilities he enjoyed a great measure of confidence and within the limit of his training and ability worked hard. On Oct. 21st, 1957, Council appointed Mr. Denyes as Manager-Treasurer by By-Law No. 6938 at a salary of \$6500.00. In July of 1956 Mr. Denyes was appointed Hockey Manager, and thereupon set out to

carry out the instructions of the Arena Commission as he understood it. There was a limit placed of \$900.00 for home games, later increased to \$1200.00. On Oct. 5, page 1107 et seq. Mayor Hyde asked this question of Mr. Denyes:

Question - "What I want to get at is, 'Do you feel that the

Commission were left with the impression that on a hundred per cent of the gate they would profit to the extent of eight thousand dollars and some odd cents?"

Answer - "It is quite possible. Yes, I wouldn't say that much."

Mayor Hyde:

Question - "I think the Exhibit indicates that the exact amount was, and to my memory is, I will have to rely on my memory, \$8,078.03. We have learned, apparently, that the true picture was that we had lost some \$26,000.00. Some members of the Commission and myself in particular, it has been read into the record that we intimated that there would be no cost to the taxpayers of Belleville. Would you care to go back to that first Meeting when the \$900.00 figure was set up and tell us if you have any memory of a verbal Commission order that if you found the team going behind then you would notify us so it could be packed up in mid-season?"

Answer - "There was some discussion but I cannot remember just what was said. I knew it was to try and operate it on \$900.00, then when I couldn't I came back to the Committee and asked for more money."

Mayor Hyde then questioned Mr. Denyes as to the second season, 1957-1958, that there had been a statement submitted showing a profit of some \$5,000.00. Oct. 5, page 1112. Then at line 16 of the same page these questions and answers were given:

Answer - "You asked me yourself, your Worship, last December

what the payroll was and I told you it was over \$2,000.00 and we were \$4,000.00 in the red at that time."

Question - "How much/"

Answer - "\$4,000.00 on the current year's operation."

The Commissioner:

Question - "That is you say you told the Mayor that the payroll was \$2,000.00?"

Answer - "It was over \$2,000.00."

Question - "And what else did you say to him?"

Answer - "And that we were operating at over a \$4,000.00 deficit on the season."

Mayor Hyde:

Question - "This is in the world championship year?"

Answer - "Yes, last December."

Question - "And it was \$4,000.00 you told me, was it?"

Answer - "It was \$4,000.00 up until then. It was just after the month or five weeks after the thing had opened. You said you were worried about the caliber of the team, that if it had to be strengthened it should be strengthened."

Mr. Denyes took the Mayor at his word and in his capacity as Hockey Manager had already strengthened the team.

The cheques that were issued to hockey players on salary account from which income taxes were deducted were issued on the account carrying the stamp of "Belleville Memorial Arena Senior A Hockey Club, D.S. Danyes, Manager." The payments to hockey players from which no income taxes were deducted were issued on another account set up for this purpose on which was typed on the words "Belleville Memorial Arena Special Account, D.S. Denyes." Since there were not sufficient funds in these two accounts to carry on the extensive hockey operations of the Club there were cheques issued on the General Account of the Corporation of the City of Belleville payable to the various members of the Senior Hockey team. The series of six cheques, Exhibit 56, are all dated November 29th, 1956, and on the left hand side of the

printed cheques are the words "Payroll account" and underneath a blank line under which is printed, "Comptroller or Chairman of Finance." There was at this time no such official but it is perhaps significant that the printed form of the cheque is intended to provide for a second signature. Similarly, on January 3rd, 1957, there is a series of ten cheques, payable to hockey players and all issued by Mr. Denyes as Treasurer on the General Account of the City of Belleville. There was a total of \$645.00 in these ten cheques. Exhibit 58. Similarly, there is another series of twelve cheques, all dated January 23rd, 1958, (Exhibit 57) and payable to hockey players on the Belleville-McFarlands Senior A Hockey team in amounts ranging from \$50.00 to \$125.00. These cheques are on the payroll account of the City of Belleville and signed by D.S. Denyes, Treasurer. These are not all the cheques on the payroll account of the City of Belleville paid to hockey players but they are filed as exhibits to show the pattern of payments carried out by the Treasurer in 1956, 1957 and 1958.

Mr. Denyes was asked by Commission Counsel as to how he carried out the operation of getting these hockey players on the City payroll.

Answer - "I submitted a list of the players I wanted on the payroll each week to the Public Works Department, who were in charge of the weekly payroll, which consisted of the Public Works employees, school guards, and any other miscellaneous help that is engaged during that week." Oct. 1, page 698.

Mr. Denyes then explained that the hockey payroll always appeared as accounts receivable due from the Arena in the postings in the Treasurer's office for General Ledger purposes. Mr. Denyes has already stated his reason for putting hockey players on the public payroll was to try and exempt the Hockey Club from paying Hospital tax. There was another reason of course namely "to keep the team operating, which their fans in the City, and the Council members, wanted." Oct. 2, page 733.

However, in December 1956 Mr. Denyes became alarmed that the Hockey Club and the Arena might have to pay Hospital tax on the total gate receipts. He consulted with Mr. Dennis Herring, then City Manager, who both thought it feasible to put these players on the weekly payroll of the City. Oct. 1, page 637. This was an attempt to comply with the regulations under the Hospital Tax Act "That you must have sixty per cent of your players making \$20.00 a game or less, including all play-offs, regular season and exhibition games." So Mr. Denyes paid players from the hockey account that would be under this amount and if their salary was over he put the differences on the City payroll.. Mr. Denyes said that this scheme was his own thinking. "It was my own thinking. I realized it was going to cost the Arena Commission nine per cent of the gate receipts if there wasn't some way devised. Oct. 1, page 641. Did anyone else know ?

Me. Denyes said:

Answer - "No, as I said, Members of Council at that time were not aware of the cheques being paid from the payroll." Oct. 1, page 657-8.

The Commissioner:

Question - "When did they first become aware if at any time?"

Answer - "Well, I believe finally they became aware May the 9th, but I have sort of reason to believe some of them might have known before. It was hearsay from information I have heard from individuals."

Commission Counsel:

Question - "And you didn't tell any member of the Arena Commission or the Committee or any member of City Council that you were doing this?"

Answer - "No, I didn't."

Mr. Denyes confirms Mr. Lewars' statement that he, Denyes, had told the auditor when Mr. Lewars first questioned him in 1958 he had hoped this money would be repayable from play-off receipts. When asked why he didn't disclose the situation Mr. Denyes reply was, "The same thing would happen

that happened on May 9th of this year, I would be suspended."

Mr. Denyes in his capacity as Treasurer concealed information from his employers that he was under a duty to disclose. Oct. 2, page 792 and 831. It is also clear that Mr. Denyes submitted statements which did not disclose the true expenditures that had been made on behalf of the Hockey Club.

In his capacity as Manager of the Hockey Club he had issued certain cheques to himself which are marked in each instance, "Meals and Travelling expenses." At the end of his career as Hockey Manager there was some confusion as to the fact he was issuing some cheques on his own personal account to pay Hockey Club expenses. Mr. Denyes and his counsel Mr. Cass went to considerable trouble and pains to clear up discrepancies in the auditor's special report dated May 9th, 1959, as to sums of money unaccounted for and which in great detail Mr. Denyes did account for. There is not a scintilla of evidence to show that Drury Denyes appropriated public funds to his own use.

The learned Commission Counsel in his argument has referred me to Section 103 of the Criminal Code which reads as follows:

"Breach of trust by public officer.

103. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person."

Mr. Denyes did not ask for the protection of Sub-section 5 of the Canada Evidence Act or of Section 7 of the Ontario Evidence Act or either or both of them as they might hereafter apply to any proceedings civil or criminal, that may be taken. To a large extent he threw himself on the mercy of the citizens of Belleville.

In view of the fact that Mr. Denyes is one of the

defendants in a ratepayers action it would be improper for me to pre-judge or prejudice Mr. Denyes' rights in any trial which may arise out of these proceedings. It does not come within the scope of my duties as Commissioner to make any recommendation that the evidence given by Mr. Denyes be turned over to the Crown Attorney. My duty as I understand it under the terms of the Commission of Inquiry is to report the facts to the Minister of Municipal Affairs.

In closing this phase of my report on the conduct of Mr. Denyes in his various duties as City Manager, City Treasurer and Hockey Manager I should note the frankness with which Mr. Denyes has told the story of his experiences as the Manager of the Belleville Macfarlands Senior A Hockey team in its quest for the world championship.

It should be noted much of this evidence which was given with respect to the inner workings of the Hockey Club, together with the evidence of Mr. George S. Dudley, Secretary-Manager of the Canadian Amateur Hockey Association, and that of His Worship Mayor Harvey J. McFarland of Picton was not relevant to the issues to which I was directed, it undoubtedly has served a useful purpose in throwing a flood of light on the operation of what is termed Amateur hockey in Canada. Mr. Cass has referred to Mr. Denyes' preoccupation with the Senior A. Hockey Club as a "magnificent obsession." Mr. Denyes' Counsel has, in effect drawn a magnificent red herring across the real issues involved in this Inquiry. None the less, the candour with which Mr. Denyes has exposed the operation of this Senior A. Amateur team cannot help but clear the air with respect to "amateur" hockey. It is not something for which the citizens of Belleville are responsible. Their ratepayers should not have had to shoulder this financial load. To some degree, this responsibility is shared by every Senior Hockey town in Canada. Possibly this reflects on the price that Canadians are willing to pay for a winning team. One can agree with Mr. Cass's argument to the limited extent that Mr. Denyes' frankness and candour in disclosing the players salaries and the mechanics of the

operation of this Amateur team might be considered as a public service.

Coming back to the main issues before me as it concerns the City Treasurer, while I have made it abundantly clear that Mr. Denyes did not appropriate any public monies to his own use, he has however signally failed to carry out the duties of his office. Section 238 (1) of The Municipal Act reads as follows:

"The Treasurer shall receive and safely keep all money of the Corporation and shall pay out of the same to such persons and in such manner as the laws of Ontario and the By-Laws or resolutions of the Council direct, provided that every cheque issued by the Treasurer shall be signed by the Treasurer and by some other person designated for the purpose by By-Law or resolution of the Council and such other person before signing a cheque shall satisfy himself that the issue thereof is authorized."

This is how the Treasurer proceeded -

Question - "From the time Mr. Herring left until the time you were suspended do you know of any occasion on which the Mayor signed the transfer from the General Fund to the payroll account?"

Answer - "None that I can recollect."

Question - "Did the auditor ever ask you about that?"

Answer - "No"

Right here all the required safeguards vanished and the Hockey Manager and the City Treasurer in the person of Drury Sills Denyes, although it was not deliberately planned that way by Council, proceeded to use the City's monies as a secret reserve and never failing source of hockey players' salaries.

When the Council authorized the payroll cheques to be signed by the Treasurer alone and without any additional or other safeguard and when the City's Bankers made no distinction between what was authorized by the By-laws or Resolutions of Council the door was opened to the abuses which followed. From the time that the City Treasurer had

sole signing authority for payroll cheques he then became in a position and shamefully mis-used such position to put the hockey players on the payroll of the City of Belleville with the resulting very substantial loss to the taxpayers of the City of Belleville which they will now have to make up in a special assessment on the City's 1960 tax bills.

4. The Bank of Montreal have been the City's Bankers for more than sixty years. The ratepayers of this City are entitled to have some of these Banking practices critically reviewed. First of all, Mr. Denyes in his capacity as City Treasurer transferred from the Revenue account of the City to the Hockey account a total of \$23,373.00. Mr. Jarrett, the Bank Manager, quite frankly stated that these transfers should not have been made on one signature (actually a debit slip signed by Mr. Denyes) and should not have been made without being submitted to him because the Revenue Account when these transfers were made was already in overdraft. The sum of \$23,373.00 belongs to the City of Belleville and should be transferred to the City's Revenue Account and the Hockey account debited, even though this increases the overdraft in the latter account and which monies the Bank may not be able to recover. Mr. Jarrett did not treat the Hockey account as one which belonged to the City of Belleville. However, on October 25th, 1956, the Manager obtained an authorization to make advances of up to \$8,000.00 to the Belleville Memorial Arena Senior A Hockey Club. The letter of authorization in the second paragraph stated this Club is operated by the Arena Commission appointed by Council and is composed only of members of the Council for the Corporation. This first letter was signed by Claude D. Tice, Chairman of the Arena Commission, by A.M. Haggerty and by Dennis P. Herring, City Manager. A similar letter signed by the same persons, dated October 29th, 1957, authorized the Manager of the Bank of Montreal to make advances up to \$10,000.00 to the Senior A Hockey Club. The third letter, dated October 21st, 1958, signed by the same persons has the identical wording except that it is now authorized to make advances up to

\$20,000.00 to the Belleville Memorial Arena Senior A Hockey Club. These are Exhibits 95, 96 and 97 respectively. Mr. Jarrett obviously treated this account as if it was that of a Club or Society. The Arena Commission, of course, had no authority to operate by way of overdraft. There is more involved than these particular Arena transactions because the City was borrowing by way of substantial overdrafts. Mr. Denyes has pointed out that he endeavoured to cut down the amount of such borrowing by making sure that tax monies as received were credited against the amount of the overdrafts. From the evidence it would appear that a City Treasurer who was on the job would have made substantial savings in the amount of interest charged by the Bank on these overdrafts. On this point, the Commission Counsel has referred me to the new two volume edition, "The Law of Canadian Municipal Corporations by Ian MacF. Rogers." Volume 1 - Page 628.

"Although there is no Canadian authority on the point, English courts have laid down the rule that it is ultra vires of a municipal corporation or other local authority to borrow by means of a bank overdraft, after it has exhausted its statutory borrowing powers; it follows that it is ultra vires to pay interest on such an overdraft. If an overdraft or floating debt is obtained from the Bank in respect of borrowing powers granted for special purposes and the money was spent for general purposes, the borrowing would be illegal. The term loan includes a bank overdraft but it is doubtful if an overdraft could be maintained by Ontario municipalities without having complied with the statutory prerequisites."

All Bank overdrafts are borrowings (Cunliffe Brooks v Blackburn & Building Society (1884) 9 App. Cas. 857.

The only municipal powers of borrowing are set out in The Municipal Act and related Statutes. Since the statutory power is to borrow when authorized by by-law, then without a by-law the loan is illegal and unenforceable.

See Watrous Engine Co. v Capreol (1922) 52 O.L.R. 247 and
McArthur v Portage LaPrairie (1893) 9 Man. R. 588.

Statutes giving borrowing powers are narrowly construed, and powers must be given expressly or by necessary or unequivocal implication, or otherwise they will not be recognized. Se Rogers Canadian Municipal Corporations 564.

There is accordingly the question of the liability of the Bank to the City. The amount of interest paid by the City over the past three years, on overdrafts, is very considerable. A competent treasurer might have saved enough in Bank interest to have paid a large part of his salary.

In view of the fact that a Ratepayers' Action has been instituted against the Bank of Montreal and others it is not proper for me to say anything further on this point, other than to suggest that it may very well be possible for a new City Treasurer and Finance Committee of the Council of the City of Belleville, with their auditor and solicitor to discuss, without prejudice, with the Head Office officials and their solicitors of the Bank of Montreal a procedure whereby the Bank of Montreal would be prepared to work out an agreement with the City, possibly to take over the City's debentures that will be required to get rid of its present extensive floating debt charges. The City should do some hard bargaining.

5. The entrance doorway to Belleville's dignified old City Hall has inscribed thereon the City's official crest which is also on its official stationery, "magnum est vectigal parsimonia." A free translation of this might read, "rich is the reward of thrift." The Belleville City Council and their Treasurer have paid scant attention to this old-fashioned virtue. The Council members appear to have operated on the principle that the City of Belleville either had a Royal Charter or it was a common law corporation and that the provisions of The Municipal Act did not apply to the conduct of the City's business. What Council did in the years 1956 and 1958 was to vote expenditures of money which had not been provided for in the budget and which had not

been authorized as capital expenditures. Section 322 of The Municipal Act reads as follows:

"(1) If the council applies any money raised for a special purpose or collected for a sinking fund in paying current or other expenditures, the members who vote for such application shall be personally liable for the amount so applied, which may be recovered in any court of competent jurisdiction.

(2) If the council, upon the request in writing of a ratepayer, refuses or neglects for one month to bring an action therefor, the action may be brought by any ratepayer on behalf of himself and all other ratepayers.

(3) The members who vote for such application shall be disqualified from holding any municipal office for two years. R.S.O. 1950, c. 243, s. 322."

At the meeting of Council on September 24th, 1956, the monies for the Pinnacle Street property were voted, that is, Council authorized the spending of \$37,500.00 on the purchase of this property and the recorded vote for that special expenditure was as follows:

Yeas, Mayor Forrester, Aldermen Argue, Clarke, David, Read, Graham, Grandame, C.L. Hyde, G.B. Hyde, Keegan, McCabe, Stock, Safe, Temple and Tice. Those against it none. Absent none.

This would appear to be the only unanimous vote in Council during those years. Council members unanimously took the view that the purchase was a desirable one, that they had only thirty days in which to close the sale or it would be sold to private interests and that it was in the public interest to purchase it without waiting for or asking for the approval of The Ontario Municipal Board either by way of the issue of debentures or by way of deferred payments. I have previously quoted Section 341 (9), (10) and (11) of The Municipal Act which is relevant to this particular issue. Sub-section (9) is the disqualification section provided

the member knowingly votes for excess borrowings.

There have been several reported cases under Sections 322 (3) and 341 (9) where efforts to invoke disqualification have failed on the facts. This disqualification was imposed in Rex Rel. Moore v Hammill (1904)7 O.L.R. 600.

A similar disqualification under what is now Section 322 (3) was imposed in Rex Rel. Cavanagh v Smith (1895)26 O.R. 632.

None of these cases and no reported case discusses the question of the commencement and termination of the two year period of disqualification. There may be little significance in the fact that in every reported case the application was made within less than two years after the vote or other prohibited occurrence in question but it is nevertheless the fact. The question must therefore be looked at in the light of principle free from the influence of authority.

The first principle is that as stated in R v Little, 1931 O.R. 353, a Statute imposing such a penalty is narrowly construed. The interpretation leading to the shortest disqualification is to be preferred. The second principle is that of the logic of the situation if the disqualification does not commence with a vote on what other day can it commence? There is no other possibly relevant date except that of the commencement of proceedings to unseat or that of the judgment pronouncing disqualification. If one accepts either of these alternative dates such councillor or alderman must perforce in the indefinite future either refrain from running for such public office or remain in uncertainty as to whether he may be suddenly unseated and disqualified for two years. For example: If after joining in an illegal vote in 1956 the alderman had been advised of the disqualification and had abstained from standing for council in 1957-8-9 he could not run for the 1960 or any subsequent council without assuming the risk of being unseated. In order to protect himself against such a prospect he would have been obliged to have a friend take

proceedings against him in 1956 and submit to being unseated then, or else secure election in 1957 and endure unseating then. The alternative appears to lead to an absurd conclusion and the only logical conclusion is that the disqualification commences on the date of the illegal vote.

Disqualification may be enforced at once under Section 173 (1) of The Municipal Act. A relator may take proceedings within six weeks after knowledge of the facts constituting a ground for disqualification comes to his attention.. This fact is inconsistent with any other time of commencement of the two year term. Rogers, Canadian Municipal Corporations, Volume 1, Page 183, says, "A Contravention of the provisions of the Act relating to illegal voting would appear to result in disqualification before election as well as afterwards". The conclusion that an illegal vote in 1956 leads to disqualification ending in 1958 is, in my opinion, inescapable. In plain words, all the members of the 1956 Council who choose to run in 1960 are free to do so.

At a meeting of Council on September 22, 1958, there is a resolution on page 943 of the Minutes - certain parcels of land which were expropriated in 1957 were to be used for parking purposes and were to be purchased by the City at the rate of seventy cents per square foot. The resolution authorizes the City Manager and the Solicitor to complete the transaction. The amount involved which came out of the City's revenue account totals \$31,661.80. No attempt was ever made by the members of Council to obtain the approval of The Municipal Board for these capital expenditures although there was ample time in this case for all the ordinary procedures to be followed. There is no recorded vote on that resolution but the members present at the meeting according to the Council Minutes were as follows: His Worship Mayor G. B. Hyde, Aldermen Argue, Collins, Digby, Forrester, Graham, Grandame, Ireland, Moxan, McCabe, Temple, Tice, Whalen, and Wishart. Absent at that meeting Alderman Safe.

It is not necessary to prove participation in a recorded vote to invoke the disqualification. If an alderman was present at a meeting at which a By-law authorized illegal expenditures out of revenue account he must have voted in favour of it unless he is reported as having voted against it or as having abstained. See Rex Rel. Bitzer v Jaimet (1940) O. R. 366. See also Rogers, Canadian Municipal Corporations, 242 and cases cited there. If, therefore, an illegal vote under the section in question was given by the Mayor and Aldermen in 1958, the disqualification would have affected the election of the 1959 Council. However, any would-be relator who learned the facts more than six weeks ago would be unable to take proceedings to unseat the wrongdoer. See Section 173 (1) of The Municipal Act, and remarks and cases cited in Rogers, Canadian Municipal Corporations, at 131-2. Again, in plain words, those members of the 1958 council who choose to run in 1960 are not now liable to disqualification proceedings.

There was another vote taken although not recorded and for this we have to go to Exhibit 36, the Arena Commission meeting held on Thursday, April 18th, 1957, at 4:30 p. m., with the following present:

Alderman Tice, Chairman; Her Worship Mayor Forrester, Alderman G. B. Hyde and Alderman Graham, Mr. Denyes, Treasurer and Manager of the Senior A Hockey Club; Mr. Herring, City Manager; Mr. Gerow, Manager of the Arena.

It was moved by Alderman Graham, seconded by Alderman G. B. Hyde, that the money be transferred from the Arena account to the Hockey account to pay the overdraft at the Bank of Montreal. This was an illegal transfer.

There were voices raised asking questions as to Hockey Club operations. In the Minutes of a regular meeting of Council of April 29, 1957, appears the following:

"Alderman Whalen inquired from Alderman Tice, Chairman of the Arena Commission, whether the hockey team had made or lost money. He said

"that he had been asked that question from the public. Alderman Tice replied that a financial report would be made to Council next Monday evening and a recommendation with regard to next year's operation would be placed before a full committee of the Council."

An extract from the Minutes of a regular Meeting of the Belleville City Council on May 13th, 1957, reads as follows:

"Re amendment re recommendation for Senior A Hockey Club for 1957-58 Season.

Alderman Argue verbally - that the recommendation be tabled until we have the auditor's report re Arena Commission to sponsor Senior A Hockey for the 1957-58 season, recorded vote Yeas 12, Nays 1, absent 2. Carried."

The "Comments" in the 1956 auditor's Report by Mr. Lewars are dated March 19th, 1957, and this Report included the matter of the Arena Commission, but not of course any Hockey Club accounts.

It would appear that one of the difficulties confronting the City Council was the fact that the members of Council were striking their tax rate before they had received their auditor's Report. In a City of this size it would appear prudent that the Council should appoint a firm of auditors with adequate staff to give a complete audit within a reasonable period after the year end so that they will not be operating in the dark in making up their annual budget prior to striking the City's tax rate. Section 249 of The Municipal Act duly sets forth the responsibility for the financial affairs of the City:

"The council shall on the report of the auditors finally audit and allow the accounts of the Treasurer and collectors."

Council, on their own evidence never took the trouble to read the "Comments" in the auditor's Report, let alone to look at the Report itself. Mr. Lewars performed a

great many useful functions for the City of Belleville but the recommendations that he made Council members consistently chose to ignore. Council never in fact ever appointed Mr. Lewars by By-Law nor did he ever take his Declaration of Office.

The matter of the City's unsold debentures out of revenue account was apparently never considered by Council. Council depended on its Treasurer in these matters and the Treasurer was so busy with other duties that the situation has now developed to the extent that it has. It would seem reasonable also to say that Council had a duty to see that its chief municipal officers were not overloaded and that they were in a position in which they were able to carry out their duties. It is true Mr. Denyes volunteered to act as Hockey Manager and that it was a hobby but it is very obvious that it has been a very expensive hobby for the City in that the City has not had the services of a competent Treasurer for the past two years.

Coming now to the management of the Belleville Memorial Arena and the Hockey Club, Mr. Fennell has not minced any words in stating that he doubts if any greater exhibition of municipal mismanagement has occurred in Ontario. There is here a serious question as to the negligence of the Council as a whole in this matter. There is the question of whether the operation of the Hockey Club was ultra vires. Sub-section 53 of Section 386 of The Municipal Act was first enacted in 1946. The relevant portion of this Section reads as follows:

"386. By-laws may be passed by the Councils of all municipalities.

(53) Notwithstanding any general or special Act, subject to the approval of the Department, for acquiring, erecting, altering, maintaining, operating or managing or granting aid for the acquisition, erection, alteration, maintenance, operation or management of monuments, memorial windows, tablets, buildings, arenas, auditoriums, parks, recreational areas, health or community centres, etc."

Whether or not the fact that the consent of the Department of Municipal Affairs was required before the City took over the Arena when purchased in the year 1946 there is no question of the right of the municipalities under that Section of The Municipal Act to operate a Memorial Arena. If there is a deficit on the operations it must be levied for in the tax rate. The question as to whether the City of Belleville had the right to run a Hockey Club may not be free from doubt but certainly the manner in which the City through its Arena Commission undertook to run its Hockey Club cannot possibly be defended. This is not the problem however for this Commission. The Arena's hockey club operations are ended and Mayor H.S. MacFarland is now solely responsible for this season's hockey operations.

In the Minutes of November 5, 1956, Alderman Tice reported to Council as follows:

"As a member of the Arena Commission, I endorse everything that has been done. When we decided to have a Hockey team and play Senior A. Hockey, it was decided that Mr. Denyes be the Manager of the team. He has spent a great deal of time and work and has certainly done a most excellent job. I, as Chairman, do not know, nor does any member of the Commission know, the financial arrangements with the hockey team, and that is as it should be."

This is about as clear a definition as could be given in asking Council to wholly disregard the principle on which municipalities are administered. Thousands of dollars were placed completely under the control of the Hockey Manager with very little in writing to protect the municipal treasury.

The 1957 members of the Arena Commission were:

Her Worship Mayor Jane Forrester, Alderman Gerald B. Hyde, Alderman C. D. Tice, Alderman R. L. Graham, B. A., Alderman F. V. Grandame.

The 1958 members were:

His Worship Mayor Gerald B. Hyde, Alderman R. B.

Collins, B.A., Alderman R. L. Graham, B.A.,
Alderman C. D. Tice, Alderman F. V. Grandame.

The 1959 members are:

His Worship Mayor Gerald B. Hyde, Alderman C. D.
Tice, Alderman R. B. Collins, B.A., Alderman
R. L. Graham, B.A., and Alderman F. V. Grandame.

The three senior officials in the past three years
were: Mayor Jane Forrester in 1957, Mayor G. B. Hyde in
1958 and Alderman C. D. Tice as a member of the
Arena Commission for the past four years and Chair-
man in 1959. He has been an Alderman for ten years-
continuous since 1947 except the years 1949 and 1954.

Commission Counsel used some strong words with
respect to these elected representatives who were close to the
operation of the Hockey Club in stating they were either utterly
stupid or that they deliberately lied. I am far from saying that
Mr. Fennell is clearly wrong but I cannot satisfy myself that he
is clearly right. Mayor Forrester had been an alderman for only
one year before her election as Mayor in 1956 and 1957. Rank
certainly confers obligations and I am of the opinion that Mayor
Forrester simply did not know what was going on in connection with
Hockey Club matters. In a City of Belleville's present size and
with its annexation problems it takes more than a year as an
alderman to have an adequate knowledge of the City's finances.
Mayor Hyde was certainly interested in promoting the Hockey Club
activities and his actions may have been due more to political
expediency than to any other reason. That may be one of the
weaknesses of local selfgovernment but it has also many strengths.

In the same Minutes of their regular Council meeting
on November 5th, 1956, occurs the following report:

"Alderman Hyde spoke of the splendid work of the
Manager of the Hockey Team, Mr. Drury Denyes; the
work and time he had spent, and that the response
of the people at the turnstiles had been wonderful.
He stated, 'We have every indication that this will
be a highly successful season. Under no consideration
will the taxpayer have to pay anything.'" Oct 28, 1956

The evidence of Alderman C. D. Tice, the Chairman of the Arena Commission, was given quite frankly and with some emotion as to his feeling that Drury Denyes was still a hero in his estimation. Alderman Tice, with considerable experience in arena management, said, "I think that it would cost \$25,000.00 a year to run a Club like what we were running over and above what was taken in." Unfortunately, it was the taxpayers of the City of Belleville who were, "taken in." Many of them may have been put off guard with respect to the operations of their Hockey Club by the fact that they may have assumed that Mayor McFarland was picking up the tab for the costs of operation in excess of the gate receipts. The evidence as to how much information Council had, including the respective Mayors for those years, is hard to assess from the actual evidence. The payroll which included the hockey players was prepared in Mr. Mott's office in the City Hall. It was typed there and taken to the City Manager's office, who signed it. It was taken from the City Manager's office to the City Treasurer's office and the cheques were issued, so that you have Mr. Herring, the former City Manager, who knew it; Mr. Denyes knew it and Mr. Mott and Mr. Turnbull of the City's offices knew it. Mr. Herring, for what it is worth, said it was no secret but the evidence stopped short of proof that members of Council had actual knowledge of these illegal practices. It seems to me with respect, however, that there was gross negligence on the part of the Mayor and Council of the City of Belleville in those years in permitting this state of affairs to develop to the extent to which it did. There was, of course, the contributory negligence of the auditor but the Council of those years must accept its share of responsibility for these substantial losses of the City's revenues and which the City's taxpayers must now make up. There were, of course, other cheques issued to hockey players on the Belleville Memorial Arena Senior A. Hockey Club and Arena special accounts which were authorized by the Arena Commission. Messrs. Mott and Turnbull, as City employees, were given instructions by Mr. Herring and by Mr. Denyes to put these hockey players on the City payroll account for certain purposes and they are not in any

wise to blame for carrying out these instructions and should not in any wise be penalized because of the evidence which they gave. Mr. Mott, on the last day of the hearing corrected his evidence and stated that the actual payrolls never reached Council. While these payrolls may have formerly reached Council. under the Committee system it was not followed under the City Manager's system and this distinction should be noted.

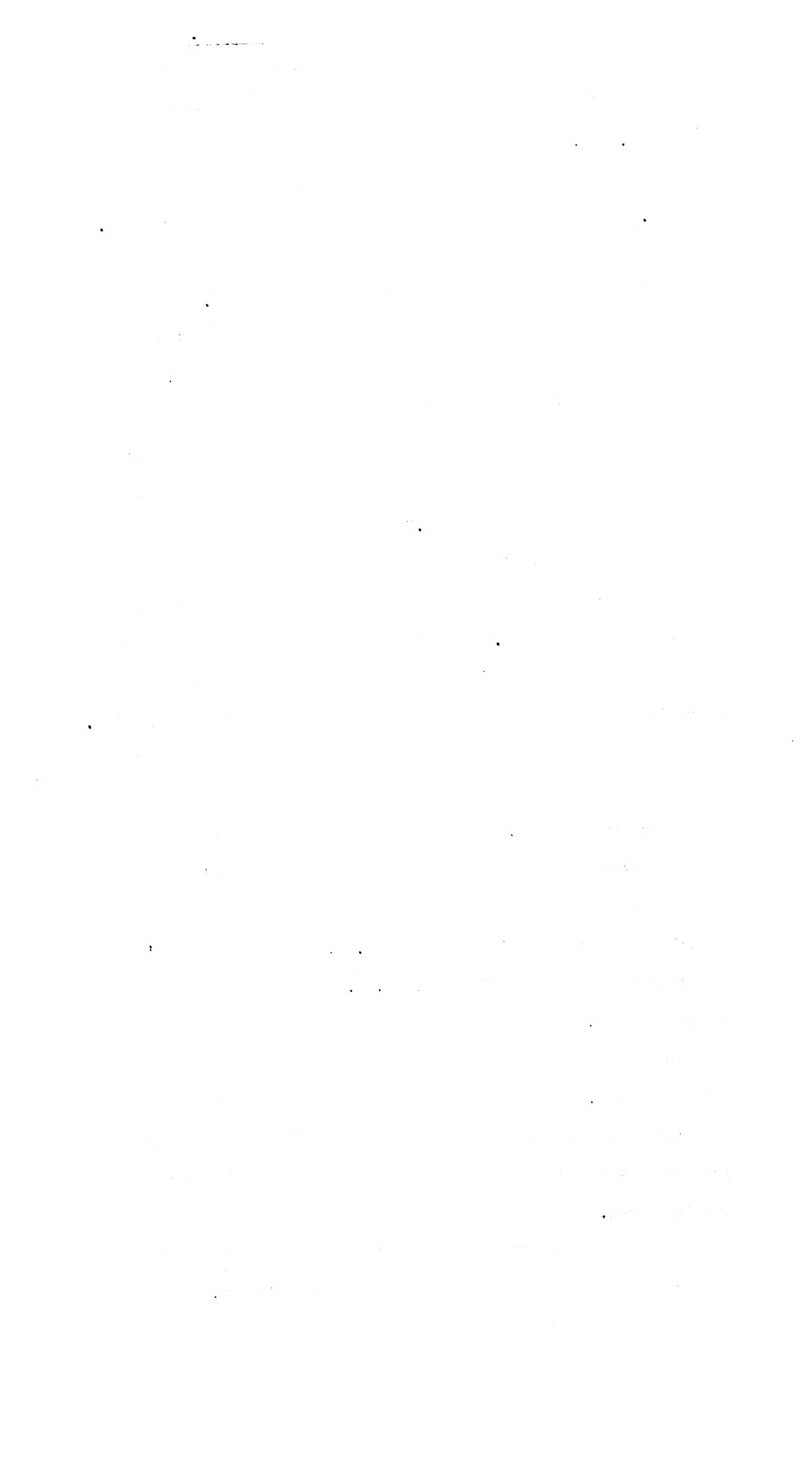
Section 238 of The Municipal Act referring particularly to the last portion of sub-section (1) reads:

"Every cheque issued by the treasurer shall be signed by the treasurer and by some other person designated for the purpose by by-law or resolution of the council."

The direction is that cheques shall be signed by the Treasurer and by some other person designated for this purpose by by-law or resolution. Council never passed any such authorization and the Bank did not have any record other than the annual borrowing by-laws as to who were the signing officers for the City.

It would appear the members of Council had little actual control over the City's finances although they were the policy making body. Their annual budget was prepared and the tax rate struck before Council got its Auditor's Report and as a result the Treasurer's statement as to their deficit last year was given as \$55,000.00. When the Auditor's Report came out later it is \$106,000.00. The difference is not levied for. This is an example of the fact Council had no real knowledge of the state of the City's finances from month to month. They were apparently willing to remain in the dark until the bombshell of the Treasurer's illegal hockey expenditures brought the whole issue of the City's finances into public review.

The City Councils of 1956 to the present time have received on occasions letters from their solicitor,



their auditor and from the Department of Municipal Affairs, to all of which they apparently paid scant attention. Mr. R. A. Pringle, Q. C., City Solicitor, wrote the Mayor and Council by letter dated January 27th, 1956, and answered Council's inquiry as to the management of the Belleville Arena. He stated that the Arena was absolutely owned by the City and that its control and management was entirely a matter of responsibility for the City Council. The last paragraph of this letter reads as follows:

"Unless provided for in the annual budget, Council cannot authorize the Arena to incur any debt or Bank overdraft without the approval of The Municipal Board."

The letter is stamped as having been received in the Comptroller's office on January 30th, 1956.

In a letter dated May 28th, 1957, Mr. Lewars on a letterhead of Mr. F. A. R. MacFadden, Chartered Accountant, wrote Her Worship The Mayor and members of the Municipal Council as to the practicability of the Treasurer of the City acting in that capacity as well as that of City Manager as was proposed at the Meeting of Council on Monday, May 27th, 1957. Mr. Lewars concluded that it might prove to be detrimental to the best interests of the Treasurer's Department and to the City of Belleville as a whole if the City Treasurer were appointed to act as City Manager as well as City Treasurer at the same time. Mr. Lewars was careful to state that his opinion was not intended to cast any reflection on the capacities of the City Treasurer but the auditor believed that the best interests of the City would not be served, even for a temporary period if one person is appointed to two separate major posts in the municipal organization of Belleville. This letter came to Council on the initiative of Her Worship Mayor Forrester, and Mayor Forrester states this letter was read in open Council.

October 9 Page 1866.

There was also a letter from the Department of Municipal Affairs which was referred to Mr. Herring, the

City Manager, just prior to his departure in 1957. It was written by Mr. Butler of that Department commenting on certain matters raised by the Municipal auditor in his 1956 Report. This included for the first time the question of the deferred charges made during 1956 for the purpose of acquiring property for off-street parking facilities. Mr. F. G. Blake, C.A., Director of the Auditing and Accounting Branch of the Department of Municipal Affairs, gave evidence that there was no indication in the Minutes regarding any disposition of that letter except that it was considered in Council but no action or reply apparently was made with regard to the matter of the deferred charges. Mr. Blake has also commented on the fact that there was no indication in the 1956 Audit Report that the City had launched itself in the business of operating the Hockey Club.

I think it important to note that Mr. Blake as the trouble-shooter for the Department of Municipal Affairs was entitled to speak very frankly at the Council Meeting which he attended on May 12th of this year. At that time he was asked to express his views to the Council. In his evidence Mr. Blake has put the case as to some of the causes for the City's present difficulties in sharp focus. The following excerpt is taken from Mr. Blake's evidence: Oct. 19 Page 2600.73.

"My remarks were perhaps extreme, because they were designed to shock the Council into some action, my most critical comments were addressed to Council, I recall that I said that I was amazed that there were so many lawyers on the Council and yet the City had persisted for several years in doing things in an illegal manner.

It is true that I was critical of Mr. Denyes, I mentioned in that connection that the Council had paid a cheap salary for two senior positions as well as perhaps including the hockey manager's position in connection with the salary and that they had received a cheap job, which in my opinion was inevitable.

I stated that in my opinion the Council had not really had a City Manager or a City Treasurer, but only a Hockey Club Manager because it was apparent that Mr. Denyes had devoted perhaps his enthusiasm and most of his energy towards the hockey club which at that time seemed to be the main purpose of the City."

Mr. Blake stated that as a result of the neglect of the Treasurer's duties the Bank interest charges were higher than they should be because the finances were not being properly managed and that grants were not being applied for as promptly as they should have been. At that same Meeting to keep the record straight Mr. Blake stated he was also critical of the auditor but he pointed out to the Council that the auditor was entitled to some degree of carelessness, that ordinary carelessness is not necessarily gross negligence and that the auditor is not liable for damages resulting from ordinary carelessness. In answer to criticism by aldermen that the Department made no comment on the 1957 Auditor's Report, Mr. Blake stated that there were about 977 municipalities in the province and it was not feasible to review and write each one yearly with the staff available.

6. The City Solicitor, Mr. R. A. Pringle, Q.C., gave evidence on the fourteenth day of this Inquiry that the City has made application to The Ontario Municipal Board for permission to extend its borrowings over the legal limit of seventy percent of the total amount of the estimated revenues as set forth in the estimates. The acting City Treasurer, Mr. W. D. MacArthur, and the auditor, Mr. J. D. Lewars have supplied Mr. Pringle with the following figures:

	<u>Treasurer's figures.</u>	<u>Auditor's figures.</u>
Operating Expenditures	\$ 806,450.	\$ 700,000.
Debentures maturing (includes Thurlow)	259,504.	317,000.
High School Grant	300,000.	288,000.
Cost of Judicial Enquiry	<u>35,000.</u>	<u>35,000.</u>
	\$ 1,400,954.	\$ 1,340,000.
Current Bank Loans	350,000.	351,500.
	<u>\$ 1,750,954.</u>	<u>\$ 1,691,500.</u>
Estimated Revenue \$1,048,506. \$1,080,000.		
Borrowing authority 70% of Revenue	733,954.	756,000.
	<u>\$ 1,017,000.</u>	<u>\$ 935,500.</u>

Using the auditor's figures, the situation would appear to be as follows:

Expenditures to the end of 1959	\$1,340,000.
Add present Bank Loan	<u>351,500.</u>
	\$1,691,500.
Less Estimated Revenue at	<u>\$1,080,000.</u>
	\$ 611,500.

Mr. Pringle's suggested proposal to balance the City's accounts on the basis that 1 mill yields \$26,000.00 (actual yield \$26,342.49) can be summarized as follows:

Deficit to December 31st, 1959, estimated at	\$ 611,500.
Levy for 1960 taxes - Hockey	\$ 110,000.
Levy accumulated Arena Loss	32,000.
Balance of deferred payments would then be	<u>\$ 469,500.</u>
	<u>\$ 611,500.</u>
	<u>\$ 611,500.</u>

Deferred payments to be made as follows:

Bonds issued and held at Bank	-	\$ 49,000.
Balance to be carried on deferred bank loan a five year period.		420,500. for

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Annual levy for principal - \$84,100.00 or approximately 3.32 mills, plus levy for interest of roughly half a mill. Against this deferred loan at the bank should be applied all taxes owing beyond the year 1958, which amount to \$154,000. and a loss of at least 10% should be allowed to arrive at the true figure.

The increase in taxation to cover payment of the above is estimated to be as follows:

For the year 1960 to pay for accumulated arena loss and hockey loss	5.4 mills
To pay for deferred payments over five years	3.2 mills
Estimated interest	<u>1 mill</u>
Total increase in taxation 1960	<u>9.6 mills</u>

The able Commission Counsel, Mr. Fennell, has reached a figure of somewhere between \$850,000.00 and \$900,000.00 which is close to the estimate given by Mr. MacArthur and Mr. Lewars but is reached by an entirely different process of reasoning. What Mr. Fennell and the others are talking about is the City's cash position. There are assets on the credit side of the revenue fund Balance Sheet against which the City can borrow money from the Bank under Section 341. The amount which it can borrow is 70% of the receivables which are set out in the sections. Whatever the amount the City can borrow for its year end requirements, the City is in no position to deal with emergencies if they arise and it is obvious that City Council and its solicitor will have to act very promptly in placing its financial difficulties before The Municipal Board.

It should be noted here, that when this Inquiry was launched that there was authority to retain an auditor and to have a special audit of the City's books. It has become apparent since this Inquiry started that this would have resulted in many weeks' delay as the books were not posted. The report of this Inquiry might well have been held up until next year. This, in my judgment in which the Commission Counsel has concurred, was not in the City's interests but it should be very clearly understood that until the books are posted and the auditors have an opportunity to complete an audit at the year end the figures given by the acting City Treasurer, the present auditor and by Commission Counsel are only estimates. It should also be clearly noted that the figure given by the auditor in his May 9th Special Report showing the amount

required to reach a break-even point (Mr. Lewars' words) as \$255,000.00 is not in accordance with the facts as they now have been given in evidence at this Inquiry.

The matter of the petitions from the Avondale District Ratepayers Association, presented by Mrs. Enid L. Ponton and a similar petition from the Parkdale Ratepayers Association, presented by Mrs. Dorothy K. Fralick, should be noted. As a result of the annexation by the City of 3777 acres of land from the Townships of Sidney and Thurlow, as of January 1st, 1959, the City has an increased population made up of the annexed area of Sidney Township - 1261 and from the Thurlow Township - 5377, some 6638 new residents of the City of Belleville. The Annexation Order dates from January 1st, 1959, and like a marriage, it is for better or for worse. However, these ratepayers have a strong equitable claim for reconsideration of the terms of the Annexation Order but it should be confined as recommended by Mr. Blake to the Belleville Memorial Arena (including the Hockey Club operations) deficit of \$142,000.00. The Assessment Act provides that the assessment must be made on all the rateable property, etc. I can only recommend that the prayer of these petitioners should be given serious consideration even if it means an application to re-open the Ontario Municipal Board's Annexation Order, or if this cannot be done it might be considered that it could be dealt with by way of a private Bill of the City. The City may have to ask for such legislation in dealing with the manner of payment of its substantial floating debt charges. This may apply particularly to the validating of the parking authority expenditures.

In this summary I should like to turn now to the evidence of Alderman A. R. Temple. He has had some seven years Council experience. Alderman Temple stated that he opposed the entry of Belleville into Senior A Hockey, mainly because he did not think that Eastern Ontario could compete. He did not think there were the players available. Alderman Temple raised the question, as did Alderman Graham, that if the

City was empowered to operate a Memorial Arena, was the operation of a hockey team by that Arena an incidental or ancillary power. The City solicitor has answered that question in another way, namely, that while it was incidental to the management of the Arena to operate a Hockey team, the Arena Commission had no power to make contracts on behalf of the City. October 19, Page 2588

appears this question and answer:

The Commissioner:

Question - "In other words, they should not have made contracts with hockey players at all?"

Answer - "No, they should not have made any contracts with hockey players at all, or anyone else unless it was authorized by the Council by by-law. Therefore, I am of the opinion that there is no binding contract between the various creditors and the City."

This brings us to the question of the unpaid Arena accounts with respect of some of which the City is threatened with suit. An illustration of the type of agreement entered into between the Senior A Hockey Club and the players is given in Exhibit 67 with respect to which there is an unsatisfied claim for some \$1,405.00 as listed in Schedule 17 of the auditor's May 9th, 1959, Special Audit. A copy of Exhibit 67 filed as drawn by Mr. Denyes reads as follows:

"Belleville McFarlands

Whereas Fioro Goegan desires to play Hockey for the Belleville McFarland's for the 1958-9 Season and said Club desires his services it is agreed as follows. Said player will receive the sum of \$185.00 per week guaranteed for 23 weeks.

While the team is in training player will receive the sum of \$75.00 per week.

A Bonus of \$250.00 will be paid if the club finishes in 1st place during the regular schedule.

A Bonus of \$250.00 will be paid if the club wins the World's Championship at Prague in 1959.

Player is guaranteed employment at the rate of \$75.00 per week during the off season.

Pay will not cease if player becomes injured while playing or practicing with the club or travelling to or from a game or practice.

Belleville Memorial Arena
Senior "A" Hockey Club

Signed "D. S. Denyes
Manager.

On June 15th, 1959, Mr. Goegan filed a statement claiming:

"Balance of salary owing	\$405.00
Bonus	250.00
	655.00
Guaranteed employment during the off-season of \$75.00 per week, Total as of this date	750.00
	\$1405.00

Signed "Fiori Goegan"

The City solicitor has given his legal opinion that these "contracts" with hockey players or anyone else should not have been made and that the contracts with anyone else so far as the Hockey Club was concerned would be ultra vires unless these contracts were authorized by Council by by-law.

Alderman Wishart who was opposed in general to the Hockey Club operations raised the issue with the City solicitor as to the Booth Radio and Television account of \$4455.50 for goods sold and delivered. The City solicitor felt that if the City decided that an account of this nature should in equity be paid then perhaps later on they might work out a method of paying it. There can be little doubt the City solicitor is correct in his opinion that the accounts set out on Schedule 17 of the auditor's Special Report are ultra vires contracts which the creditor cannot enforce against the City.

The learned Commission Counsel has raised the question as to the supervision which can be exercised by the Department of Municipal Affairs under Section 33 of that Act where a municipality has or may become financially involved or embarrassed so that default or unusual difficulty in meeting debts or obligations or in

providing adequate funds to meet current expenditures may ensue.

I concur in the opinion expressed by the Commission Counsel that complete supervision under this Act at this time should be avoided if at all possible. It may well be that the ratepayers of the City of Belleville might be re-assured to have their Council request some voluntary supervision from the Department of Municipal Affairs which would certainly be forthcoming.

There is no reason why this City by the efforts of its own Council and its municipal officers cannot overcome its present financial difficulties. Its per capita tax levy of \$79.82 is the lowest in a group of eleven cities with populations between 20,000 and 50,000. Belleville's debenture debt issued and assumed is the second lowest in this same group. Its tax arrears are, however, second highest, at \$9.33 per capita, being exceeded only by the City of Cornwall in this regard. These figures are taken from the 1958 Annual Report of Municipal Statistics, Department of Municipal Affairs.

The general credit of the City is sound and the ratepayers of this City may well feel that this has been an expensive lesson for them but they have it in their own control to elect a Mayor and aldermen who will set the 1960 tax rate on the basis of their auditor's report and not on any grounds of political expediency.

There is another facet to this Inquiry that should be noted. Evidence was given before me by Messrs, J.C.R. Punchard, L. Arthur Young and G.A. Freeman, as to the issue of certain Supreme Court writs by six of the manufacturing firms in the City of Belleville. These writs had been issued at the County Town of Milton in July against the Corporation of the City of Belleville, Mayor Hyde and ten of the City Aldermen, the Bank of Montreal, the auditor, Mr. J.D. Lewars, and Drury Denyes. The writ was in the nature of a ratepayers action claiming an injunction and accounting for funds disbursed without lawful authority during the years 1957, 1958 and the first six months of 1959, and damages for negligence, etc. These gentlemen are members of the manufacturers section of the Chamber of Commerce

who are among the largest taxpayers in Belleville and were very much interested in the state of affairs in Belleville. There were three writs issued but the first writ which was issued on the 9th of July, 1959, was discontinued on the 15th of July. The second writ was issued on the 15th of July, 1959, and the third writ was issued on the 27th of July, 1959. Mr. Punchard stated that their Committee wrote to The Honourable W.K. Warrender, Q.C., Minister of Municipal Affairs, to make sure that this present Inquiry would take place. October 14, Page 2004. Mr. Punchard said, "In other words, we wanted to make sure that the actual facts of this matter were made known to the citizens of Belleville, that was our interest as taxpayers and indirectly representing all the taxpayers."

The writs were not served although certain of the defendants were inquiring as to whether they had in fact been issued. There was certain correspondence addressed to Mayor Hyde as a representative of the City by the Chamber of Commerce requesting the City to issue writs against all responsible officials in the City and the City Council. The reason for this was because of the six months' limitation in Section 11 of The Public Authorities Protection Act. We are not concerned in this Inquiry with this litigation.

I listened with some sympathy to Alderman A.R. Temple's spirited protest that he did not want such a writ unserved and having it hang like a sword of Damocles over his head or over the collective heads of members of the Council. Having been sued personally on two occasions while a member of a municipal council (once along with all other members, and once alone, but both unsuccessfully) I have some feeling that the hazards of a municipal councillor's or alderman's life should not be made too onerous. However, in this instance, it is my considered view that under all the circumstances that had arisen with respect to the state of the City's finances it was in the public interest to take the action which was taken by these plaintiffs at the time that it was taken. It may well be that the writs have served their purpose and that it is not necessary to pursue an action which might go to the Supreme Court of Canada.

The good judgment, good faith and alertness of the City's elected representatives and Treasurer and Auditor, with the help of their City Solicitor, might be expected to enable the City to turn over a new leaf and satisfy its ratepayers its financial affairs are being put in order.

The question of the possibility of recovering certain monies under the Surety Bond contract covering the Treasurer should be pursued by Council and their solicitor. Mr. F.G. Blake, C.A., stated that there was a definite claim which the City should make for possibly \$2,000.00, and a possible claim for the rest of the amount of the Bond (22,500.00) and I recommend that no stone be left unturned to collect what can be salvaged for the benefit of this City's taxpayers. Mr. Blake has also made invaluable suggestions to Council as to certain matters to increase the efficiency of their City management, and particularly the Treasurer's department, which should be given Council's attention. October 19 Page 2600.88 et seq.

The City of Belleville needs and I have no doubt this coming year will have a Mayor who will in fact be the Head of the Council and who can and will provide leadership in bringing about the gradual and orderly solution of the City's financial difficulties and make a clean break from the present disastrous policy of political expediency.

Belleville, also, very urgently needs a Treasurer in fact as well as in name with sufficient seniority and authority to streamline the treasurer's office in accordance with modern business practices. The councils of at least the past three years have been negligent with respect to this vital requirement.

The City's auditors, whomever they may be, should have sufficient staff to complete their annual audit before and not after the tax rate is struck. They should also during 1960 exercise constant supervision and provide the new City Treasurer with advice and help in getting his office system and practices up to date. This is a matter on which responsibility rests on this year's Council as to the manner and the time of making any

change, having in mind the urgency of getting the City's books posted and the true financial position of affairs established so that the City's application to The Ontario Municipal Board can be proceeded with to extend the City's borrowing powers for its year end requirements.

The City solicitor, with whom I clashed as to the duties of a part-time municipal solicitor, made it clear he felt Council knew what they were doing in making capital expenditures out of current revenues. In my opinion, Mr. Pringle should have used his undoubted abilities to clamp down on these illegal actions of the Council. It is part of the duties of a municipal solicitor, who is not a full time official, to sit down with council members on occasion and point out the municipal facts of life! If there is any doubt as to the legality of certain council procedures the municipal solicitor should set it down in language so plain that no layman can afterwards say he did not understand that such actions were illegal.

The present Arena Committee or "Commission" as it has been called, and its Chairman, Alderman Claude E. Tice, should be relegated to the limbo of the municipal archives and a fresh start made in which any deficit on Arena operations will be levied in each year's mill rate. The Arena is a community asset but if there is any doubt that the operation by the City of what was in effect a professional hockey team is ultra vires then the legislature should make it abundantly clear that no municipality has any such ancillary powers under Section 386 (53) of The Municipal Act.

I am sure that many Belleville ratepayers and also Council members can point to defects and omissions in this Report. In my opinion, the citizens of Belleville have already received incalculable benefit from this Inquiry as a result of the daily press and radio reports of each day's hearings. Possibly these reports have been of some benefit in other communities as well. If so, they will probably choose to remain anonymous. The marshalling of the evidence during the hearing and the closing

argument by Mr. Stanley E. Fennell, Q.C., the Commission Counsel, has helped very materially to get through the maximum amount of detailed evidence which it was possible to do and to permit the conclusion of this Inquiry at the end of fifteen days of evidence including the arguments of Mr. Fennell and Mr. Cass on behalf of Mr. Denyes. The facts have been disclosed as far as it has been possible to get them. We have heard the truth although possibly not the whole truth.

The City has some excellent officials, among them the Assessment Commissioner, Mr. G. L. Thompson; the Welfare Administrator, Mr. G. A. Whitman; the City Engineer, Mr. Malcolm MacKenzie Turnbull; the Deputy Clerk, Mr. Adam S. Stalker, and of course others whom I did not hear or see who may be equally worthy of honourable mention. Council might well take time to consider a job evaluation survey for its City employees which would show appreciation of excellent service, and to provide for promotions in the City's service on the basis of merit.

There has been a good deal of vigorous political infighting engaged in by Council members and officials which I did not cut off even though some of it might have been considered irrelevant. The evidence given at an Inquiry of this nature is entitled to at least qualified privilege. From the judgment of Riddell J. in *Nixon v O'Callaghan* (60) O.L.R. 86 I quote this excerpt, "It is not the law that if "A" slanders or libels "B", "B" has a legal right to slander or libel "A", but our law recognizes that we live in a work-a-day world with its rude buffetings, not an idyllic paradise of Watteau shepherds and shepherdesses, but full of men with red blood and strong passions." On this note I close this Report in the expectation that the 1959 municipal elections should clear the air and that it is accordingly very much in the public interest to have this report delivered as promptly as possible. This I have endeavoured to do.

Dated at the Town of Cobourg this 31st day of October, A.D. 1959.

(sgd) A.R. Willmott.

